

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ColorQuick, L.L.C.,

Plaintiff,

v.

Vistaprint Limited

Defendant.

Civil Action No. 6:09-cv-323-LED

**DEFENDANT VISTAPRINT LIMITED'S RESPONSE TO THE
JUNE 16, 2011 MAGISTRATE JUDGE'S ORDER**

Defendant Vistaprint Limited ("Vistaprint") hereby responds to the Magistrate Judge's Order, dated June 16, 2011 (Dkt. 269) (the "Order") requesting briefing on the presentation of Release 5.1 as an anticipatory reference relevant to the invalidity inquiry.

I. DISCUSSION

Vistaprint agrees with the logic and case law presented in the Court's Order. In granting-in-part Vistaprint's Motion for Summary Judgment of Non-Infringement, the Court properly determined that "the PDL image file to be revised in step (c) of Claim 1 must be the original PDL image file used to create the still image proxy" of step (a). (Dkt. 202 at 8.)¹ It is undisputed that Vistaprint.com "creates a *new* PDL image file that incorporates the manipulations made to the image display of the still image proxy, rather than revising the original PDL image file." (*Id.* at 9.) Accordingly, the Court determined that Vistaprint.com

¹ The Magistrate Judge's Report and Recommendation was adopted by Judge Davis on June 9, 2011. (Dkt. 250.)

cannot literally infringe step (c) of Claim 1 as a matter of law. (*Id.*)

Vistaprint will show at trial that the relevant functionality of Vistaprint.com is *the same* in Release 5.1 as in the accused system. (*See* Dkt. 135 [Vistaprint's Mot. for Summ. J. of Invalidity], ¶¶ 15-16, 20.) And, since the accused Vistaprint.com system cannot literally infringe, the same functionality present in Release 5.1 cannot anticipate. *Glaverbel Societe Anonyme v. Northlake Mktg. & Supply, Inc.*, 45 F.3d 1550, 1554 (Fed. Cir. 1995). In accordance with the Order, Vistaprint will present Release 5.1 as part of an obviousness inquiry before the jury and will not argue that Release 5.1 anticipates the '149 patent. However, Vistaprint maintains that Release 5.1 is a legal limitation barring ColorQuick's asserted equivalents.

DATED: June 19, 2011

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by facsimile and/or U.S. First Class Mail on June 19, 2011.

/s/ Christopher Campbell

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